

ELSIE I. STEWART
WALTER G. STEWART

IBLA 82-537

Decided April 6, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 31608 and I MC 31609.

Affirmed, as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

The conclusive presumption which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse non-compliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Don L. Roberts, Esq., Mountain Home, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Elsie I. Stewart and Walter B. Stewart appeal the Idaho State Office, Bureau of Land Management (BLM), decision of February 4, 1982, which returned, unrecorded, the affidavit of assessment work for 1981 and declared the unpatented Helena and Helena Extension No. 1 lode mining claims, I MC 31608 and I MC 31609, abandoned and void because no evidence of assessment work or notice of intention to hold the claims was filed with BLM during calendar year 1980 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Appellants state only that the required assessment work has been performed each year since they acquired the claims in 1974, and the appropriate paperwork has been filed with BLM in Boise.

The file indicates that the Helena claim was located June 25, 1968, but the notice of location was not filed with BLM until February 26, 1980; the proof of labor for 1979 was filed with BLM December 26, 1979. The Helena Extension claim was located May 29, 1976, and the notice of location was filed with BLM February 26, 1980; there is no record of any proof of labor for this claim.

[1] Section 314 of FLPMA, supra, requires that the owner of a pre-FLPMA unpatented mining claim must file in the proper office of BLM a copy of the recorded notice of location and evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and evidence of annual assessment work or notice of intention to hold prior to December 31 of every calendar year thereafter. Such filing must be made in both the office where the notice of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with

the other. Accomplishment in the proper county office of a recording of evidence of assessment work or notice of intention to hold the mining claim does not relieve the owner of the claim from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Enterprise Mines, Inc., 58 IBLA 372 (1981); Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314, FLPMA, are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Enterprise Mines, Inc., *supra*; Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellants. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, *supra*.

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, *supra* at 192; 88 I.D. at 371-72.

As the required instruments relating to these claims, located prior to October 21, 1976, were not filed with BLM on or before October 22, 1979, BLM should have declared the claims abandoned and void for that reason. The decision of February 4, 1982, is so modified.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

